

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

Order No. 14 -XXX-SW

Ralph Farris)
4263 County Road 43)
Coffee Springs, Geneva County, Alabama)
_____)

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code § 22-22A-1 to 22-22A-16, as amended, and the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code § 22-27-1 to 22-27-18, as amended, and the ADEM Administrative Code promulgated hereunder, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following finding of facts:

1. Ralph Farris (“hereinafter Mr. Farris”) is the owner of property located at 4263 County Road 43 in Coffee Springs, Geneva County, Alabama, which is the subject of this Administrative Order.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code § 22-22A-1 to 22-22A-16, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code § 22-27-1 to 22-27-18, as amended.

4. Ala. Code §22-27-2(37), as amended, and ADEM Admin Code r. 335-13-1-.03 (139) define an “unauthorized dump” as “any collection of solid wastes either dumped or caused to be dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department.”

5. Ala. Code § 22-27-4(b), as amended, states the following: “The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined...”

6. Ala. Code § 22-27-10(b), as amended, states the following: “The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article.”

7. ADEM Admin. Code r. 335-13-1-.13 (1) (a) prohibits unauthorized dumps.

8. On November 29, 2012, Department personnel conducted an inspection and documented the existence of an unauthorized solid waste dump (hereinafter “UAD”) located on the property of Mr. Farris at 4243 County Road 43, Coffee Springs, Geneva County, Alabama. The UAD consisted of household wastes. Property ownership was determined by a review of Geneva County records.

9. On January 2, 2013, the Department issued a Notice of Deficiency (hereinafter “NOD”) to Mr. Farris for an UAD.

10. The NOD was returned unclaimed to the Department.

11. On March 6, 2013, the Department reissued the NOD to Mr. Farris for an UAD.

12. The Department did not receive a response to the March 6, 2013 NOD.

13. On April 15, 2013, the Department issued a Notice of Violation (hereinafter "NOV") to Mr. Farris for the UAD requiring abatement and closure of the site, and submittal of associated documentation.

15. The Department has not received a response to the April 15, 2013 NOV.

16. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Mr. Farris did not comply with the requirements applicable to solid waste disposal. The Department is unaware of any irreparable harm to the environment, any immediate threat to human health, or the safety of the public as a result of these violations.

B. THE STANDARD OF CARE: Mr. Farris failed to abide by the applicable solid waste requirements and failed to respond to notices from the Department.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Mr. Farris has realized a significant economic benefit as a result of the violations noted.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any attempts by Mr. Farris to mitigate potential effects upon the environment and human health that may have been caused as a result of the unauthorized solid waste dump.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of previous violations of applicable solid waste requirements.

F. THE ABILITY TO PAY: Mr. Farris has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has also considered the penalty range imposed for similar violations at other UAD.

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Solid Waste Dump	\$0 - \$25,000

The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000.00 is appropriate. The civil penalty is summarized in Attachment A.

ORDER

Based on the foregoing findings of fact and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7, and 22-27-11, as amended, it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, Mr. Farris shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P O Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference Mr. Farris' name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Mr. Farris shall cease and desist from operating an UAD.

C. That, within thirty days of the issuance of this Order, Mr. Farris shall submit an abatement plan to the Department in accordance with ADEM Admin. Code div. 335-13. This plan shall include a schedule for abatement completion. Mr. Farris shall implement the abatement plan and remove the wastes onsite to an approved landfill unit.

D. Mr. Farris shall document abatement activities by submitting the following to the Department within thirty days of abatement completion:

1. Time period in which the abatement activities occurred.
2. Total volume of waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, before, during, and after abatement.
6. Documentation that adequate sedimentation controls were employed to prevent erosion from disturbed areas resulting from the remediation activities.
7. Documentation that the site has been secured to prevent any future illegal dumping.

E. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

F. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. Farris for the violations cited herein.

G. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Mr. Farris for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2014.

Lance R. LeFleur
Director

ATTACHMENT A

Penalty Synopsis

Ralph Farris
4243 County Road 43
Coffee Springs, Alabama

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-13-1-.13 (1) (a) declares that open or unauthorized dumps are prohibited.	1	\$4,000	\$1,000	\$0
Totals:	1	\$4,000	\$1,000	\$0

Economic Benefit*: \$0
Mitigating Factors*: \$0
Ability to Pay*: \$0
Other Factors*: \$0

Total Civil Penalty: \$5,000

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE ATTORNEY GENERAL

STATE OF ALABAMA

Footnotes

* See the "Findings" of the Order for a detailed description of each violation and the penalty factors